

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

SWIVEL RENTAL & SUPPLY LLC

CIVIL ACTION NO. --18-1141

VERSUS

JUDGE JUNEAU

PETRO BULL LLC, ET AL.

MAGISTRATE JUDGE WHITEHURST

JUDGMENT

Upon consideration of the Objection filed by Bacchus Lifting L L C, Jason Bellard, Bowls Slips & Grips L L C, Dow Drobish, Petro Pull L L C, (collectively "defendants") Rec. Doc. [32], to the Report and Recommendation of the Magistrate Judge previously filed herein, Rec. Doc. [31], recommending that the RENEWED MOTION to Dismiss For Failure to State a Claim filed by Swivel Rental & Supply L L C ("plaintiff"), Rec. Doc. [23], be GRANTED IN PART AND DENIED IN PART; the Court having conducted an independent review of the record, adopts in part the Report and Recommendation.

The Court finds that the motion to dismiss the defendants' counterclaims alleging patent invalidity, to the extent such claims are premised on 35 U.S.C. §§101, 102, 103, and 112, should be DENIED AND DISMISSED WITHOUT PREJUDICE.

The Court adopts all remaining reasons of the Report and Recommendation having determined that the findings and recommendations are correct under applicable law.

Accordingly,

IT IS ORDERED that the Renewed Motion to Dismiss Pursuant to Rule 12(b)(6), Rec. Doc. [23] filed by plaintiff Swivel Rental & Supply, LLC is **GRANTED IN PART AND DENIED IN PART**, as follows. Defendants' counterclaims alleging patent invalidity, to the extent such claims are premised on 35 U.S.C. §§101, 102, 103, and 112, is **GRANTED**, and these counterclaims are **DENIED AND DISMISSED WITHOUT PREJUDICE**. The defendants' counterclaim alleging patent invalidity under 35 U.S.C. §132 is not dismissed, as the plaintiff has not sought dismissal of this counterclaim.

IT IS FURTHER ORDERED that the motion to dismiss defendants' LUTPA counterclaims is **DENIED** on grounds that the defendants fail to state a claim and on grounds that the LUTPA claims are prescribed/preempted, but is **GRANTED** on grounds of preemption only to the extent that these counterclaims are based on plaintiff's alleged improper use of patent rights.

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 17th day of July, 2019.



MICHAEL J. JUNEAU
UNITED STATES DISTRICT JUDGE